

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2860 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHUPENDRA F KAPADIA

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 2860 of 1994
MR UM SHASTRI for Petitioner No. 1
MR PRANAV G DESAI for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 13/12/2004

ORAL JUDGEMENT

This is a petition of 1994, which is listed today for the 7th time. When it was called out both, learned Counsel for the petitioner as well for the respondent, were absent. It appears from the order sheet of this case that on 1.3.1994 S.M.Soni, J. (as he then was) admitted this petition by issuing Rule, making it returnable on 25.3.1994, but the interim relief, prayed for in the petition, was refused. Though the petition

was ordered to be heard in March, 1994, even after a period of more than 10 years it is not heard so far. It seems that both, the petitioner and his Advocate, have lost all interest in the matter. Therefore, none of them was present. Be that as it may. Dismissing the petition for default would be an exercise in futility because, on a restoration Application, the matters are normally restored. In absence of the learned Counsel for the parties, I have carefully gone through the impugned Award (Annexure : A), passed by the Labour Court, Jamnagar, on 27.12.1993, dismissing the Reference made at the instance of the petitioner. Having carefully gone through the same it is clear that while dismissing the Reference the learned Judge has not committed any error which calls for interference of this Court in its writ jurisdiction under Article 227 of the Constitution, the scope of which is very narrow and limited, as held by the Hon'ble Supreme Court in the case of MOHD.YUNUS v/s. MOHD.MUSTAQIM & ORS., REPORTED IN AIR 1984 SC 38. In the said decision, the Hon'ble Supreme Court has held that -

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Court under Art.227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the lands of its authority, and not to correct an error apparent on the face of the record much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision."

In the instant case the petitioner was working as Conductor, who was charge with serious misconduct of defalcation of public money. In a running trap between Chandrawada to Porbandar, the bus in which he was conductor, was checked by a Checking Party. It was found that though he had collected the fare from some passengers he had not issued the tickets to them. After holding regular inquiry the petitioner was dismissed from service by the respondent - Corporation on the serious charge of mis-appropriation of public fund found to be proved against him in the inquiry. Reference was made before the Labour Court and as stated earlier the Labour Court found no irregularity or illegality committed by the Corporation during the inquiry, therefore, the Labour Court had dismissed the Reference on the ground that

there was a dishonest intention on the part of the workman, therefore, he cannot be reinstated in service on the same post. The Labour Judge was also of the opinion that if such a person is reinstated in service, inspite of the charge is fully found to be proved against him, then those others indulging in same activity of dishonesty would also get encourage. Thus, it would not be in the interest of justice of anyone .

The reasons assigned by the Labour Court in dismissing the Reference are absolutely just and proper which does not call for interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution.

In view of the above, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

Date : December 13, 2004 (B.J.Shethna, J.)

sas